

Chapter 1: Required Procedures for Civil Infractions

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Part A—Introduction

1.1 Civil Infractions

*See MCL 600.8701 et seq. (municipal civil infractions) and MCL 600.8801 et seq. (state civil infractions).

As of 1994, Michigan has grouped civil infractions into three major categories: those infractions found in the Motor Vehicle Code, MCL 257.1 et seq., state civil infractions, and municipal civil infractions. See MCL 600.113. Motor vehicle violations can be found in each of the three categories.*

A. Motor Vehicle Code Civil Infractions

Michigan law recognizes several types of traffic offenses. Years ago, all traffic offenses were classified as crimes. The offenders were tried in criminal courts and, if found guilty, were punished by fines and imprisonment. As the number of drivers and vehicles increased, the burden on the criminal courts became unmanageable. In 1979, the Michigan Legislature amended many sections of the Motor Vehicle Code (MVC), changing the status of many traffic misdemeanors to civil infractions. Many minor traffic offenses were thereby decriminalized and have thereafter been adjudicated in hearings (formal and informal) rather than trials. See 1978 PA 510 (“Civil Infraction Act”), and *People v Schomaker*, 116 Mich App 507, 515 (1982) (under the amended statute, denial of jury trial to persons charged with civil infractions did not render amendment unconstitutional).

The MVC clearly distinguishes the civil infraction from the misdemeanor and felony traffic offense. “It is a misdemeanor for a person to violate this act, unless that violation is by this act or other law of this state declared to be a felony or a civil infraction.” MCL 257.901(1). In other words, all civil infractions are declared by statute to be so.

Civil infraction actions are civil proceedings. MCL 257.741(1). Adjudication of a civil infraction violation follows the rules of civil procedure as provided in a separate court rule. See, generally, MCL 257.741–257.750 and MCR 4.101. The court must decide either in favor of the plaintiff or in favor of the defendant by a preponderance of the evidence. Because the defendant no longer faces the possibility of going to jail, the procedural safeguards necessary in a criminal case (e.g., the right to a jury trial, the right to appointed counsel for indigents, proof beyond a reasonable doubt, and strict adherence to the rules of evidence) are not observed.

A driver who is cited for a civil infraction does not plead “guilty,” “not guilty,” or “nolo contendere”; he or she must either admit responsibility, admit responsibility with explanation, or deny responsibility for the civil infraction violation. MCL 257.745. Defendant drivers are not convicted but instead are found responsible. Because a civil infraction is not a crime, findings of responsibility are not reported on the defendant’s criminal record;

however, they are reported to the Secretary of State and appear on the defendant's "Master Driver Record" maintained by the Secretary of State.

Most traffic offenses are no longer criminal offenses but are now civil infractions. Civil infractions are not crimes and are not punishable by imprisonment or by penal fines.

B. Time Guidelines for Processing Civil Infraction Cases

"The time specified in a citation for appearance shall be within a reasonable time after the citation is issued" MCL 257.741(3). Administrative Order 2003-7, 469 Mich lxv (2003), established time guidelines for case processing.* The guidelines for civil infraction proceedings are as follows:

"90% of all civil infraction cases, including traffic, nontraffic, and parking cases, should be adjudicated within 35 days from the date of filing; 98% within 56 days and 100% within 84 days." 469 Mich at lxviii.

*The guidelines do not supersede procedural requirements in court rules or statutes. 469 Mich at lxvi.

1.2 Distinguishing Civil Infractions From Criminal Traffic Offenses

A civil infraction is "an act or omission prohibited by law which is not a crime . . . and for which civil sanctions may be ordered." MCL 257.6a. Crime means "an act or omission forbidden by law which is not designated as a civil infraction, and which is punishable upon conviction by any 1 or more of the following:

"(a) Imprisonment.

"(b) Fine not designated a civil fine.

"(c) Removal from office.

"(d) Disqualification to hold an office of trust, honor, or profit under the state.

"(e) Other penal discipline." MCL 750.5.

A civil infraction is not a crime and therefore not a lesser-included offense of a criminal offense. MCL 257.907(1).

"A warrant may not be issued for a civil infraction unless permitted by statute." MCR 4.101(A)(4). The court cannot issue a warrant if the violation is not a crime. However, the civil infraction could create the impetus for issuing a warrant. For example, if the defendant fails to appear or otherwise respond to any matter pending relative to a civil infraction action (failure to do so is a misdemeanor), the court shall notify the Secretary of State and the

Secretary of State shall suspend the defendant's license. If the defendant is later stopped while driving on a suspended license (also a misdemeanor), the court may issue a warrant. See MCL 257.321a(1) and (2).

1.3 Jurisdiction and Venue for Traffic Civil Infractions

A. Jurisdiction

*This statute also gives the Recorder's Court jurisdiction of traffic civil infraction actions. However, Recorder's Court was abolished in 1997. See MCL 600.9931.

*See *Juvenile Traffic Benchbook—Revised Edition* (MJI, 2005), Section 1.2, for detailed discussion of jurisdiction of civil infractions committed by minors.

MCL 257.741(2) provides that the district court and any municipal court have jurisdiction of traffic civil infraction actions.*

Note: The district court may establish within the court a traffic bureau to accept and collect civil fines and costs as prescribed by the judges of the district. MCL 600.8391.

MCL 257.741(5) states:

“If the person cited [for a civil infraction] is a minor, that individual shall be permitted to appear in court without the necessity of appointment of a guardian or next friend. The courts listed in subsection (2) shall have jurisdiction over the minor and may proceed in the same manner and in all respects as if that individual were an adult.”*

B. Venue

“Venue in the district court shall be governed by [MCL 600.8312].” MCL 257.741(4).

MCL 600.8312(6) states:

“(6) Venue in civil infraction actions shall be determined as follows:

“(a) In a district of the first class, venue shall be in the county where the civil infraction occurred.

“(b) In a district of the second class, venue shall be in the district where the civil infraction occurred.

“(c) In a district of the third class, venue shall be in the political subdivision where the civil infraction occurred, except that when the violation is alleged to have taken place within a political subdivision where the court is not

required to sit, the action may be heard or an admission entered in any political subdivision within the district where the court is required to sit.”

1.4 Hearings a District Court Judge or Magistrate May Conduct

A district court judge may hear and decide all civil infraction cases. MCL 600.8301(2). A district court judge must conduct all formal hearings in civil infraction actions. MCL 257.747(1). A district court judge must also conduct a hearing on an appeal from an informal hearing conducted by a district court magistrate. MCL 257.746(5)(b). A chief district court judge, presiding district court judge, or the only judge of a district court may confer authority on a district court magistrate to preside over civil infraction actions as authorized by MCL 600.8512. MCL 600.8512(3). MCL 600.8512 provides that a district court magistrate may exercise the following authority:

“(1) A district court magistrate may hear and preside over civil infraction admissions and admissions with explanation and conduct informal hearings in civil infraction actions In exercising the authority conferred by this subsection, the magistrate may administer oaths, examine witnesses, and make findings of fact and conclusions of law. If the defendant is determined to be responsible for a civil infraction, the magistrate may impose the civil sanctions”

“(2) A district court magistrate shall not conduct an informal hearing in a civil infraction action involving a traffic or parking violations governed by . . . 257.1 to 257.923 of the Michigan Compiled Laws, until he or she has successfully completed a special training course in traffic law adjudication and sanctions. The course shall be given periodically by the state court administrator.

“(3) A district court magistrate may exercise the authority conferred by this section only to the extent expressly authorized by the chief judge, presiding judge, or only judge of the district court district.”

MCL 600.8512a also restricts a district court magistrate’s authority to the extent that is authorized by the district court. MCL 600.8512a states in part:

“Only to the extent expressly authorized by the chief judge, presiding judge, or only judge of the district court district, a district court magistrate may do 1 or more of the following:

“(a) Accept an admission of responsibility and order civil sanctions for a civil infraction and order an appropriate

civil sanction permitted by the statute or ordinance defining the act or omission.”

See also MCR 4.401(B), which states that “[n]otwithstanding statutory provisions to the contrary, [district court] magistrates exercise only those duties expressly authorized by the chief judge of the district or division.”

District court judges have superintending control over district court magistrates. MCL 600.8541 states:

“(1) The judges of the district court shall exercise superintending control over all magistrates within their districts. A district judge may not extend the jurisdiction of a district court magistrate beyond the jurisdiction expressly provided by law.

“(2) A district court judge may perform in chambers all functions and duties which a district court magistrate is authorized to perform under [MCL 600.8511 or 600.8512a.]”

A district court judge’s control of a district court magistrate’s actions is also recognized in MCR 4.401(C), which states that “[a]n action taken by a [district court] magistrate may be superseded, without formal appeal,* by order of a district judge in the district in which the magistrate serves.”

*See Section 1.15, below, for discussion of appeals from informal hearings.

Part B— The Citation

1.5 Traffic Citations

A civil infraction action begins with the issuance, service, and filing of a citation. MCL 257.741(1) and MCR 4.101(A)(1). The plaintiff in a civil infraction action is either the state if the alleged civil infraction is a violation of the Motor Vehicle Code, or a political subdivision if the alleged civil infraction is a violation of a local ordinance that substantially corresponds to a provision of the Motor Vehicle Code. *Id.*

Citation means “a complaint or notice upon which a police officer shall record an occurrence involving 1 or more vehicle law violations by the person cited.” MCL 257.727c(1). The citation must be in a form as determined by the Secretary of State, the Attorney General, the State Court Administrator, and the Director of the Department of State Police. *Id.* MCL 257.727c(1)(a)-(d) require a citation to consist of the following:

“(a) The original which shall be a complaint or notice to appear by the officer and shall be filed* with the court in which the appearance is to be made.

*See Section 1.6(B), below, for information on filing a citation.

“(b) The first copy which shall be retained by the local traffic enforcement agency.

“(c) The second copy which shall be delivered to the alleged violator if the violation is a misdemeanor.

“(d) The third copy which shall be delivered to the alleged violator if the violation is a civil infraction.”

“A single citation may not allege both a misdemeanor and a civil infraction.”
MCR 4.101(A)(3).

The citation serves as a summons to command both the defendant’s initial appearance and a response from the defendant as to his or her responsibility for the alleged violation. MCR 4.101(A)(2)(a)-(b).

A. Information Required on the Citation

Citations are required to contain specific information. Electronic citations must also meet these requirements. MCR 8.125(B). The following information shall be included on a citation:

- the name of the state or political subdivision acting as the plaintiff;
- the name and address of the person to whom the citation is issued;
- the civil infraction alleged;
- the place where the person shall appear in court;
- the telephone number of the court; and
- the time at or by which the appearance shall be made. MCL 257.743(1).

Additionally, a citation must inform the defendant that he or she may do one of the following by the appearance date specified on the citation:

- “Admit responsibility” in person, by representation, or by mail; MCL 257.743(2)(a).
- “Admit responsibility with explanation” in person, by representation, or by mail; MCL 257.743(2)(b).
- “Deny responsibility” by appearing before the district court either for an informal hearing before a district court magistrate or judge, without the opportunity of being represented by an attorney; or for a formal hearing before a district court judge, with the opportunity to be represented by an attorney. MCL 257.743(2)(c)(i)-(ii).

MCL 257.743(3)-(4) contains the following additional requirements:

*See Section 1.18, below, for information on default judgments.

“(3) The citation shall inform the defendant that if the person desires to admit responsibility ‘with explanation’ other than by mail or to have an informal hearing or a formal hearing, the person must apply to the court in person, by mail, or by telephone, within the time specified for appearance and obtain a scheduled date and time to appear for a hearing. A hearing date may be specified on the citation.

“(4) The citation shall contain a notice in boldface type that the failure of a person to appear within the time specified in the citation or at the time scheduled for a hearing or appearance will result in entry of a default judgment* against the person and in the immediate suspension of the person’s operator’s or chauffeur’s license. Timely application to the court for a hearing or return of the citation with an admission of responsibility and with full payment of applicable civil fines and costs constitute a timely appearance.”

If a citation is issued to a person who is operating a commercial vehicle, the citation shall contain a vehicle group designation number and indorsement description of the vehicle. MCL 257.743(5).

Parking Violation Notices. A police officer, limited duty police officer, or other authorized person may issue a parking violation notice. A parking violation notice must be filed with the court in the same manner as a citation but need not contain the same information as a citation. MCL 257.742(7). A parking violation notice need only contain a sworn complaint alleging a parking violation and information on how a defendant must respond. *Id.*

B. Signed Under Oath

When an offense is committed in an officer’s presence, a citation must be prepared and subscribed (signed by the citing officer) as soon as possible and as completely as possible. MCL 257.742(1). If the citation is filed electronically and the full name of the issuing officer appears on the citation, it will be “deemed to have been signed.” MCR 8.125(B)(3).

A citation signed by a police officer shall be treated as made under oath if all of the following requirements are met:

- the alleged violation is a civil infraction or a misdemeanor or ordinance violation punishable by not more than 93 days or fine, or both;
- the violation occurred or was committed in the signing officer’s presence, or under circumstances permitting the officer’s issuance of a citation under MCL 257.625a (governing warrantless arrests

for alcohol-related driving offenses) or MCL 257.728(8) (governing citations issued after investigation of a traffic accident); and

- the citation contains the following statement immediately above the date and signature of the officer:

“I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge, and belief.”

MCL 257.727c(3).

If the defendant admits responsibility or admits responsibility with an explanation,* the court may proceed without a sworn complaint. MCL 257.744.

*See Section 1.9, below, regarding admissions.

If a citation results in a contested hearing, formal or informal, the court may not proceed until the citation is filed with the court. If the citation was filed electronically pursuant to MCR 4.101(A)(1), the court may decline to hear the case until the citation is signed by the officer and is filed on a paper. MCR 8.125(C). If the citation is not signed and filed on paper when required by the court, the citation should be dismissed with prejudice. MCR 4.101(E)(1). Pursuant to MCL 257.744, if the defendant denies responsibility for the civil infraction, further proceedings shall not be had until a sworn complaint is filed with the court.*

*See Section 1.6(B), below, for more information on filing a citation.

In *People v Ferency*, 133 Mich App 526, 531-532 (1984), the Court of Appeals held that a signed citation constitutes a sworn complaint for the purposes of MCL 257.744. Therefore, if the officer has filed a signed citation in compliance with MCL 257.727c, the requirement of a sworn complaint has been fulfilled. MCR 4.101(A)(1) also provides that the original copy of the citation that is filed with the district court serves as the complaint.

1.6 Issuing and Filing the Citation

A. Issuing a Citation

A civil infraction proceeding begins when a law enforcement officer issues a citation to a driver. MCL 257.741(1) and MCR 4.101(A)(1). The cited driver is the defendant.

For a parking violation, a civil infraction proceeding begins when an authorized person securely places a citation or parking violation notice on the vehicle, or mails a citation to the registered owner of the vehicle, and files a copy with the district court. MCR 4.101(A)(1)(a).

A citation may be issued in the following circumstances:

- When an officer witnesses a civil infraction violation, the officer may stop and detain a person temporarily for purposes of making a record of vehicle check and issuing a citation for a civil infraction. MCL 257.742(1).
- “A police officer may stop and detain a driver involved in a motor vehicle accident for the purpose of issuing a citation for a civil infraction when (1) the officer witnesses the civil infraction violation, or (2) based upon the officer’s personal investigation, the officer has reasonable cause to believe that the driver is responsible for a civil infraction [in connection with the accident]. MCL 257.742(1), (3).” *People v Estabrooks*, 175 Mich App 532, 537 (1989).
- After a personal investigation of a citizen’s complaint, if there is reasonable cause to believe the driver committed a civil infraction and the prosecuting attorney approves in writing the issuance of the citation, an officer may issue a citation to the driver. MCL 257.742(3). “A police officer may not stop a driver for a civil infraction solely on the basis of a witness’ complaint.” *Estabrooks*, *supra* at 538.

*MCL 257.749 governs civil infraction actions involving nonresidents of Michigan. See Section 1.7, below.

The officer may also issue a citation outside of his or her area of jurisdiction. If the officer witnessed a civil infraction within his or her area of jurisdiction, the “officer may pursue, stop, and detain the person outside the village, city, township, or county where the violation occurred for the purpose of exercising the authority and performing the duties prescribed in this section and [MCL 257.749*], as applicable.” MCL 257.742(1). MCL 257.726a also provides that a peace officer may exercise his or her authority outside of his or her own jurisdiction when he or she is enforcing the MVC on the boundary of his or her county, city, village, or township.

B. Serving and Filing the Citation

MCR 4.101(A)(1)(a) and (b) state:

“(1) Except as otherwise provided by court rule or statute, a civil infraction action may be initiated by a law enforcement officer serving a written citation on the alleged violator, and filing the citation in the district court.

“(a) If the infraction is a parking violation, the action may be initiated by an authorized person placing a citation securely on the vehicle or mailing a citation to the registered owner of the vehicle. In either event, the citation must be filed in the district court.

“(b) If the infraction is a municipal civil infraction, the action may be initiated by an authorized local official serving a written citation on the alleged violator. . . .”

The original copy of the citation is filed with the district court and serves as the complaint. MCR 4.101(A)(1). The citation may be filed either on paper or electronically. *Id.** The original must be filed with the court having jurisdiction over the offense not later than three days after the date of the citation. See MCL 257.728a(1)–(2).

The Motor Vehicle Code requires that the officer inform the defendant of the “alleged civil infraction or infractions and . . . deliver the third copy of the citation to the offender.” MCL 257.742(5).

“In a civil infraction involving the parking or standing of a motor vehicle, a copy of the citation need not be served personally upon the defendant but may be served upon the registered owner by attaching the copy to the vehicle. . . .” MCL 257.742(6).

The failure to respond to a parking violation notice other than a citation may result in the issuance of a citation. A copy of such a citation may be served by first-class mail upon the registered owner of the vehicle at the owner’s last-known address. Citations alleging parking or standing violations are processed in the same manner as other citations alleging civil infractions. See MCL 257.742(7)–(8). However, the citation does not need to comply with MCL 257.727c and MCL 257.743. The citation must be a sworn complaint containing the allegations stated in the parking violation notice and must inform the defendant of how to respond to the citation. MCL 257.742(7).

*The court may require an officer to go to the court to sign the electronic copy. See Section 1.5(B), above, for more information.

1.7 Special Requirements for Nonresidents

If the defendant is a nonresident of Michigan, several special provisions apply. First, the citing officer is required by law to take the nonresident defendant’s license as security for the defendant’s appearance in court unless the nonresident leaves either a so-called guaranteed appearance certificate or a sum of money not to exceed \$100.00. Second, the nonresident has the option under Michigan law to demand to be taken to the nearest magistrate, if one is available, to answer the civil infraction charged. The nonresident defendant’s license shall be returned if:

- judgment is entered for the defendant;
- an adverse judgment against the defendant is satisfied; or
- defendant leaves either a so-called guaranteed appearance certificate or a sum of money not to exceed \$100.00.

MCL 257.749(1)–(3).

*See Section 1.16, below, for information on scheduling formal hearings.

If the nonresident defendant requests a formal hearing, the hearing must be scheduled in the same manner as any formal hearing.* However, the court must retain the defendant's license until final resolution of the civil infraction unless the defendant leaves with the court a "guaranteed appearance certificate" or a sum of money not to exceed \$100.00 as security for appearance at the formal hearing. MCL 257.749(3).

A "guaranteed appearance certificate" means "a card or certificate containing a printed statement that a surety company authorized to do business in this state guarantees the appearance of the person whose signature appears on the card or certificate, and that the company, if the person fails to appear in court at the time of a scheduled informal or formal hearing or to pay any fine or costs imposed pursuant to section 907, will pay any fine, costs, or bond forfeiture imposed on the person in a total amount not to exceed \$200.00." MCL 257.749(7).

Part C—Admissions of Responsibility and Taking Matters Under Advisement

1.8 Defendant's Options When a Citation Is Issued

The rules of procedure for adjudication of civil infractions are found in MCL 257.741–257.750 and MCR 4.101.

All defendants who receive a citation for a civil infraction shall appear and may respond to the allegations in the citation. MCL 257.745. A defendant has these options:

- Admit responsibility for the civil infraction by making an appearance in person, by representation, or by mail. MCL 257.745(2). An admission of responsibility may be offered to and accepted by a district court judge, a district court magistrate,* or other district court personnel so authorized by a judge of the district. MCR 4.101(D)(1).
- Admit responsibility "with explanation" for the civil infraction by making an appearance by mail or by contacting the court to obtain a scheduled date and time to appear in person or by representation. MCL 257.745(3). An admission of responsibility "with explanation" "may be written or offered orally to a judge or district court magistrate, as authorized by the district judge." MCR 4.101(D)(2).
- Deny responsibility for the civil infraction by making an appearance at an informal or formal hearing. MCL 257.745(5). "[A] denial of responsibility must be made by the defendant

*As authorized by the chief judge, presiding judge, or sole judge of the district. See Section 1.4, above.

appearing at a time set either by the citation or as a result of a communication with the court.” MCR 4.101(D)(3).

If a defendant has been cited for a railway municipal civil infraction resulting in property damage or vehicle impoundment, the defendant must respond at a formal hearing. MCR 4.101(D)(4).*

*See Section 1.16, below, for information on formal hearings.

1.9 Defendant Admits Responsibility or Admits Responsibility “With Explanation”

Quite often, a defendant chooses to dispose of the matter quickly by admitting responsibility. A defendant may admit responsibility or admit responsibility with explanation by mail or by personally delivering the citation to the court, or by representation. MCL 257.745(2)-(3). A defendant who admits committing the civil infraction but contends that sanctions should be mitigated because of extenuating circumstances may admit responsibility “with explanation.” “[A]n admission with explanation may be written or offered orally” MCR 4.101(D)(2).

A. Accepting an Admission of Responsibility by Mail

If a defendant admits responsibility with or without explanation for the civil infraction, he or she may do so by mail. MCL 257.745(2)-(3).

Typically, a defendant is instructed in the citation to contact the court to get the amount of the civil fine and costs. The defendant is further instructed to mail his or her copy of the citation, signed, with a certified check or money order to the court clerk, on or before the appearance date on the citation. “The time specified in a citation for appearance shall be within a reasonable time after the citation is issued. . . .” MCL 257.741(3).

When a defendant admits responsibility by mail, “the court may accept the admission with the same effect as though the person personally appeared in court.” MCL 257.745(2). When a defendant admits responsibility with an explanation by mail, “the court may accept the admission with the same effect as though the person personally appeared in court, but the court may require the person to provide a further explanation or to appear in court.” MCL 257.745(4).

B. Accepting an Admission of Responsibility in Person or by Representation

Appearance in Person. If a defendant admits responsibility for the civil infraction, he or she may appear in person. MCL 257.745(2)-(3).

*See Section 1.3(A), above, regarding jurisdiction.

A citation must include the place where the defendant must appear in court. MCL 257.743(1). The place specified in the citation must be the court that has jurisdiction* of the place where the civil infraction occurred. MCL 257.741(4). “The time specified in a citation for appearance shall be within a reasonable time after the citation is issued” MCL 257.741(3).

If a defendant is unable to appear in person at the time indicated on the citation, he or she must contact the court for a date and time to appear. “A defendant may not appear by making a telephone call to the court, but a defendant may telephone the court to obtain a date to appear.” MCR 4.101(B)(2). Scheduling the appearance date varies from court to court. Some district courts schedule a specific date for the defendant to appear. Other courts schedule the defendant to appear on a “drop-in” basis within a specific period of time. If the defendant is rescheduled from the original time indicated on the citation, the time specified should still be within a reasonable time after the citation is issued.

If the appearance date is scheduled by telephone, the court may wish to mail to the defendant a notice confirming the appearance date.

*It may be a good idea to identify the person appearing by representation for the defendant.

Appearance by Representation. Appearance by representation means the defendant chooses another person to represent the interests of or to stand in the place of the defendant. The representative is empowered to act for the defendant. When the defendant admits responsibility by representation, “the court may accept the admission with the same effect as though the person personally appeared in court.” MCL 257.745(2). When the defendant admits responsibility “with explanation” by representation, “the court may accept the admission with the same effect as though the person personally appeared in court, but the court may require the person to provide a further explanation or to appear in court.” MCL 257.745(4).*

C. Admissions With Explanation

“[T]he court shall accept the admission as though the person has admitted responsibility . . . and may consider the person’s explanation by way of mitigating any sanction which the court may order” MCL 257.745(4). The statute says “may consider”; it does not provide specific guidelines regarding when and to what extent the court should mitigate sanctions. That decision is left to the discretion of the court. The court’s experience and sense of justice should determine how defendant’s explanation is to be evaluated.

Certain factors may not only mitigate the possible sanctions but may excuse the defendant entirely. The court may wish to remind the defendant of his or her right to deny responsibility and to request a hearing. These factors include:

- inoperative or improperly working automatic traffic signals;
- signs removed by thieves or obscured because of vegetation, rust, or vandalism; and

- sudden and unforeseeable emergencies, such as brake failure not resulting from lack of proper maintenance.

1.10 Request to Withdraw Admission

MCR 4.101(G)(3) states:

“There is no appeal of right from an admission of responsibility. However, within 14 days after the admission, a defendant may file with the district court a written request to withdraw the admission, and must post a bond [equal to the fines and costs imposed]. If the court grants the request, the case will be scheduled for either a formal hearing or an informal hearing, as ordered by the court. If the court denies the request, the bond may be applied to the fine and costs.”

1.11 Taking Matters Under Advisement

The State Court Administrative Office stated the following in the October 1998 issue of the *Michigan Supreme Court Report*:

“The SCAO has been encouraged to work with the courts to discontinue the practice of not reporting traffic violation convictions to the Department of State, and to determine the appropriate disposition of fines, fees, and costs when traffic violation convictions are later dismissed.

“The recommendations were published in a recent audit by the Office of the Auditor General, which reviewed the reporting of driver license points and the collection and disposition of fines and fees. In part, the audit addressed the practice of taking traffic cases ‘under advisement.’

“The SCAO recommends that courts discontinue the practice of taking matters under advisement. All convictions must be reported to the Department of State pursuant to MCL 257.732. Without specific statutory authority, programs that provide for payment of fines, fees, or costs without entry of a conviction or report of the conviction to the Department of State must be amended to eliminate payments.

“Locally, the practice of taking matters under advisement may also be known by such terms as: delayed sentencing; deferred sentencing; diversion; auditing; dismissal with costs; or administrative review. Use of these programs is not uniform, resulting in a perception of inconsistent application of justice. Failure to submit conviction abstracts compromises the accuracy

and integrity of Michigan driving records and is a public safety issue.

“Chief judges are urged to review the following statutory provisions, ethics opinion and attorney general’s opinion regarding this matter:

- “Judicial Ethics Opinion JI-117, January 9, 1998;
- “Attorney General Opinion 6995, September 16, 1998;
- “MCL 257.6b; Definition of a civil infraction determination;
- “MCL 257.8a; Definition of a conviction;
- “MCL 257.732; Requirement to abstract convictions, bond forfeitures, civil infraction determinations, and civil infraction default judgments;
- “MCL 257.745; Procedure for admitting or denying responsibility for a civil infraction;
- “MCL 257.746; Procedure for entering a judgment of responsibility after informal hearing;
- “MCL 257.747; Procedure for entering a judgment of responsibility after formal hearing; and
- “MCL 257.907; Procedure for assessment of fines, costs and fees only after a person is determined responsible or responsible with explanation after hearing or after default.”

See also the September 1990 issue of *Michellaneous*, which contains the following statement regarding taking pleas under advisement in civil infraction actions:

“Some courts have a practice of taking civil infraction cases ‘under advisement’ when an offender admits responsibility. While there appears to be no statutory authority to provide for this practice, it is very common in some courts while not allowed in others. This situation results in confusion for litigants and can lead to a perception that all citizens do not have access to equal justice.

“Some courts limit taking civil infractions under advisement to special cases. Other courts have allowed the process to become so common that the officer (when issuing the citation) or the court clerk (when the offender contacts the court) advises the offender that s/he may request an admission be taken under advisement.

“This practice, regardless of the intentions, negatively impacts the accuracy and integrity of Michigan driving records. Under this procedure, no conviction abstract is submitted to the Department

of State. If the offender is not convicted of additional offenses for a specified time period, the citation is dismissed. Consequently, a driver may have several violations under advisement in different courts, or in some cases the same court, and eventually have all of the citations dismissed because no violation was ever submitted for entry to the driving record. As a result, a problem driver could remain on the road with an unblemished driving record.

“While the judiciary has broad discretion over procedural matters, implementation of practice and procedure is controlled by the Michigan Court Rules. To date, neither the Michigan Court Rules nor statute provide for this procedure. Standards relating to driving privileges and traffic safety are set by the Legislature. We recommend that courts discontinue the use of the ‘under advisement’ procedure.”

1.12 Defendant Denies Responsibility

A defendant may deny responsibility for a civil infraction. If the defendant denies responsibility, he or she must appear at a time set either by the citation or as a result of a communication with the court. MCR 4.101(D)(3). Once the defendant has denied responsibility, the defendant must appear for an informal or a formal hearing.*

“A contested action may not be heard until a citation is filed* with the court.” MCR 4.101(E)(1).

*See Parts D and E, below.

*See Section 1.6(B), above, for information on filing a citation.

Part D—Informal Hearings

1.13 Adjudication of Contested Civil Infraction Cases

There are two types of hearings for contested civil infraction cases: informal hearings and formal hearings. The majority of contested cases are heard and decided in informal hearings. An informal hearing will be held unless the defendant expressly requests a formal hearing, or the violation is a railway municipal civil infraction that resulted in “damage to a natural resource or facility” or a vehicle has been impounded. MCR 4.101(E)(2) and MCL 600.8717(4).

Because a defendant may not be represented by an attorney at an informal hearing, if an appearance is filed by the defendant’s attorney, the court should set the matter for a formal hearing. See MCL 257.743(2)(c)(ii).

1.14 The Informal Hearing

An informal hearing will be held except in the following circumstances:

- A party expressly requests a formal hearing. MCR 4.101(E)(2)(a).
- The defendant is represented by an attorney. MCL 257.746(2).
- The civil infraction alleged is a violation of a municipal trailway ordinance that resulted in “damage to a natural resource or facility” or a vehicle has been impounded. MCR 4.101(E)(2)(b) and MCL 600.8717(4)(a)–(b).

An informal hearing is conducted by either a district court magistrate or a district or municipal court judge. It proceeds “in an informal manner so as to do substantial justice according to the rules of substantive law but shall not be bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications.” MCL 257.746(1).

- “There shall not be a jury at an informal hearing.” MCL 257.746(1).
- “A verbatim record of an informal hearing shall not be required.” MCL 257.746(1). A record is not needed because an appeal from an informal hearing is heard by a judge in the district court at a formal hearing de novo.
- “[T]he person cited may not be represented by an attorney nor may the plaintiff be represented by the prosecuting attorney or attorney for a political subdivision.” MCL 257.746(2).
- “[T]he citing police agency . . . may subpoena witnesses for the plaintiff. The defendant may also subpoena witnesses.” MCL 257.746(3).
- If the court “determines by a preponderance of the evidence that the [defendant] is responsible for a civil infraction, [the court] shall enter an order against the [defendant] as provided in [MCL 257.907*]. Otherwise, a judgment shall be entered for the defendant, but the defendant shall not be entitled to costs of the action.” MCL 257.746(4).
- “The plaintiff and defendant shall be entitled to appeal an adverse judgment entered at an informal hearing.” MCL 257.746(5).

*See Section 1.20, below, for information on orders entered pursuant to MCL 257.907.

A. Failure of Officer to Appear

If the officer that issued the citation fails to appear, the court may either adjourn, i.e., postpone the case, or dismiss the citation. See OAG, 1983, No

6174 (August 3, 1983) (procedural due process requires presence of citing officer at hearing).

B. Procedures Following a Finding of Responsibility

If a defendant is found responsible for a civil infraction, the court must order payment of a civil fine and costs.* In addition to the civil fine and costs, the court may order the defendant to attend and complete a program of treatment, education, or rehabilitation. MCL 257.907(5).

* See Section 1.20, below.

After the court imposes sanctions, the civil fine and costs are payable immediately. MCR 1.110 states that “[f]ines, costs, and other financial obligations imposed by the court must be paid at the time of assessment, except when the court allows otherwise, for good cause shown.” “Permission may be granted for payment . . . to be made within a specified period of time or in specified installments, but unless permission is included in the order or judgment, the civil fine and costs shall be payable immediately.” MCL 257.907(2).

The court clerk is responsible for preparing the judgment abstract and forwarding it to the Secretary of State following procedures prescribed by statute. MCL 257.732.*

*See Section 1.24, below.

1.15 Appealing the Decision From an Informal Hearing

An appeal following an informal hearing is a matter of right for both parties. MCR 4.101(G)(2) and MCL 257.746(5).

- The appealing party must file a written appeal with the court within seven days of the judgment. MCR 4.101(G)(2). The appeal must be made on a form provided by the court.
- A defendant who appeals must post with the district court, at the time the appeal is taken, a bond equal to the fine and costs imposed. A defendant who has paid the fine and costs is not required to post a bond. MCR 4.101(G)(2)(a) and 4.101(G)(1)(a). “If a defendant who has posted a bond defaults by failing to appear at the formal hearing, or if the appeal is dismissed or the judgment is affirmed, the bond may be applied to the fine and costs.” MCR 4.101(G)(2)(a).
- “A plaintiff’s appeal must be asserted by the prosecuting authority of the political unit that is responsible for providing the plaintiff’s attorney for the formal hearing. A bond is not required.” MCR 4.101(G)(2)(b).

An appeal from an informal hearing is heard by a judge at a formal hearing. MCL 257.746(5). The formal hearing is held de novo, meaning that the judge

will hear the case as if for the first time; no consideration is given to the earlier hearing. If a judge presided over the informal hearing, a different judge in the same district will preside over the formal hearing. MCL 257.746(5)(a).

If a district court magistrate presided over the informal hearing, a party may appeal the magistrate's decision by right. MCR 4.401(D) states as follows:

“Appeals. Appeals of right may be taken from a decision of the magistrate to the district court in the district in which the magistrate serves by filing a written claim of appeal in substantially the form provided by MCR 7.101(C) within 7 days of the entry of the decision of the magistrate. No fee is required on the filing of the appeal, except as otherwise provided by statute or court rule. The action is heard de novo by the district court.”

This provision mirrors the provisions of MCR 4.101(G) quoted above.

In addition, the district court judge may exercise superintending control of magisterial action. “An action taken by a magistrate may be superseded, without formal appeal, by order of a district judge in the district in which the magistrate serves.” MCR 4.401(C). See also MCL 600.8541(1). In other words, a district judge may reverse the magistrate's decision even when there is no appeal. It is unlikely that a district judge will do this unless the magistrate makes a legal error or exceeds his or her authority.

Part E—Formal Hearings

1.16 The Formal Hearing

A formal hearing will be held when a defendant expressly requests one, or when the decision of an informal hearing is appealed. MCR 4.101(E)(2)(a) and 4.101(G)(2).

In addition, a formal hearing is required when a violation of a municipal railway ordinance is alleged that resulted in “damage to a natural resource or facility” or a vehicle has been impounded. MCR 4.101(E)(2)(b) and MCL 600.8717(4)(a)–(b).

The court is not required to offer a defendant a choice, but if the defendant requests a formal hearing, the court shall schedule a formal hearing. MCL 257.745(5).

- If a hearing date is specified in the citation, that date is for an informal hearing. The defendant or defendant's counsel must contact the court at least 10 days before that date, in person, by representation, by mail, or by phone, to request a formal hearing.

MCL 600.8717(2). The defendant or defendant's counsel must also notify the other parties of the request. MCL 600.8717(3). The request may be made in person, by representation, by mail, or by telephone. *Id.* (If the court is contacted by phone, the court should mail the defendant and defense counsel a confirming notice.)

- If a hearing date is not specified in the citation, the defendant or defendant's counsel must contact the court, in person, by representation, by mail, or by phone, to obtain a scheduled date and time and expressly request a formal hearing. (If the court is contacted by phone, the court should mail the defendant and defense counsel a confirming notice.)

If the decision of an informal hearing is appealed, the court shall schedule a formal hearing. The formal hearing is held *de novo*, meaning that the judge will hear the case as if for the first time; no consideration is given to the earlier hearing. MCR 4.101(G)(2). If a judge presided over the informal hearing, a different judge in the same district will preside over the formal hearing. MCL 257.746(5)(a).

A formal hearing must be conducted by a district court or municipal court judge and takes place under rules more closely resembling those of a trial. MCL 257.747(1).

The defendant must testify when called as a witness and can only invoke the Fifth Amendment privilege against self-incrimination when his or her testimony will in fact tend to incriminate him or her. *People v Ferency*, 133 Mich App 526, 533–35 (1984).

- “There shall not be a jury trial in a formal hearing.” MCL 257.747(4).
- Notice of a formal hearing must be given to the prosecutor or the attorney for the political subdivision who represents the plaintiff. The attorney must appear for the formal hearing. MCL 257.747(3).
- A verbatim record of a formal hearing is required. A record is needed because an appeal from a formal hearing is heard by a judge in circuit court, and the appeal is not heard *de novo*.*
- “[T]he person cited may be represented by an attorney, but is not entitled to appointed counsel at public expense.” MCL 257.747(2).
- The defendant may subpoena witnesses. MCL 257.747(3).
- “[T]he prosecuting attorney or attorney for the political subdivision . . . represents the plaintiff.” That attorney is responsible for issuing subpoenas for the plaintiff's witnesses. MCL 257.747(3).

*See Section 1.17, below, for information on appeals from a formal hearing.

*See Section 1.23, below, for more information on the procedures required by MCL 257.321a.

- As in a civil proceeding, if the court determines by a preponderance of the evidence that the defendant is responsible for a civil infraction, the judge must enter an order against that person as provided in MCL 257.907. MCL 257.747(5).
- An appeal is a matter of right for both parties. MCR 4.101(G)(1).

If the court finds a defendant responsible of a traffic civil infraction by a preponderance of the evidence, the court must inform the Secretary of State of the finding. If the defendant fails to pay a fine or comply with the judgment, the court must initiate the procedures required by MCL 257.321a. MCR 4.101(F)(1)–(2).*

1.17 Appealing the Decision From a Formal Hearing

Appeals from a formal hearing are heard in circuit court.

- “A defendant who appeals must post with the district court, at the time the appeal is taken, bond equal to the fine and costs imposed. A defendant who has paid the fine and costs is not required to post a bond.” MCR 4.101(G)(1)(a).
- For an appeal by right, the appealing party must file a written appeal with the court within 21 days of the judgment. MCR 7.101(B)(1)(a) and MCL 770.3(1)(b) and (c).
- “The circuit court may grant leave to appeal from a trial court or municipal court when . . . (2) the time for taking an appeal [by right] has expired.” MCR 7.103(A)(2). An application for leave to appeal “must be accompanied by an affidavit explaining the delay. The circuit court may consider the length of and the reasons for the delay in deciding whether to grant the application. A delayed application may not be filed more than 6 months after entry of the order or judgment on the merits.” MCR 7.103(B)(6).
- “A plaintiff’s appeal must be asserted by the prosecuting attorney of the political unit that provided the plaintiff’s attorney for the formal hearing. A bond is not required.” MCR 4.101(G)(1)(c).

Part F—Default Proceedings

1.18 Failure to Answer a Citation or Appear for a Scheduled Hearing

The court inevitably faces the question of what to do about “no-shows.” Defendants and police officers* may arrive late or fail to appear at a scheduled hearing. A district judge should develop a clear, no-exceptions policy as to what constitutes a “no show” (e.g., arriving a certain number of minutes late). When one party appears and the other one does not, the court should advise those present of the time by which the absent party must appear. If the absent party appears after that time, the court should treat it as a “no show.”

A person may be found responsible for a civil infraction if he or she fails to appear in response to a citation or other notice, at a scheduled appearance date, or at an informal or formal hearing. MCL 257.6b(d). In such cases, a civil infraction determination is entered as a default judgement.

If a defendant fails to respond to a traffic citation or appear for a scheduled hearing, the court must enter a default determination and impose appropriate sanctions. MCL 257.748 states:

“If the person to whom a citation is issued for a civil infraction fails to appear as directed by the citation or other notice, at a scheduled appearance . . . , at a scheduled informal hearing, or at a scheduled formal hearing, the court shall enter a default judgment against that person and the person’s license shall be suspended pursuant to [MCL 257.321a]* until that person appears in court and all matters pertaining to the violation are resolved or until the default judgment is set aside.”

MCR 4.101(B)(4) states:

“If a defendant fails to appear or otherwise to respond to any matter pending relative to a civil infraction action, the court:

“(a) must enter a default against the defendant;

“(b) must make a determination of responsibility, if the complaint is sufficient;

“(c) must impose a sanction by entering a default judgment;

“(d) must send the defendant a notice of the entry of the default judgment and the sanctions imposed; and

*See Section 1.14(A), above, for information on an officer’s failure to appear.

*See Section 1.26, below, for discussion of license suspension pursuant to MCL 257.321a.

*See Section 1.7, above, for information on nonresident driver's license retention.

“(e) may retain the driver’s license of a nonresident as permitted by statute, if the court has received that license pursuant to statute. The court need not retain the license past its expiration date.”*

MCR 4.101(B)(5)(a)–(b) add that “[i]f a defendant fails to appear or otherwise to respond to any matter pending relative to a *traffic* civil infraction, the court (a) must notify the secretary of state of the entry of the default judgment, as required by MCL 257.732 . . . , and (b) must initiate the procedures required by MCL 257.321a” (Emphasis added.)

In addition to the fine and costs ordered, MCL 257.729 allows a magistrate to assess additional costs incurred in compelling a person to appear. The “additional costs shall be returned to the general fund of the unit of government incurring the costs.” *Id.*

Under MCR 4.101(B)(3), “[a] *clerk of the court* may enter a default after certifying, on a form to be furnished by the court, that the defendant has not made a scheduled appearance, or has not answered a citation within the time allowed by statute.” (Emphasis added.)

“If a defendant fails to appear or otherwise to respond to any matter pending relative to a state civil infraction, the court must initiate the procedures required by MCL 257.321a” MCR 4.101(B)(6). (Emphasis added.)

1.19 Setting Aside a Default Judgment

If the defendant fails to answer a citation or appear for a scheduled hearing, the clerk or the court must enter a default judgment against the defendant. In some instances the defendant may have a legitimate excuse. A defendant may ask the court to set aside a default judgment. MCR 4.101(C) states:

“(1) A defendant may move to set aside a default judgment within 14 days after the court sends notice of the judgment to the defendant. The motion

“(a) may be informal,

“(b) may be either written or presented to the court in person,

“(c) must explain the reason for the nonappearance of the defendant,

“(d) must state that the defendant wants to offer a defense to or an explanation of the complaint, and

“(e) must be accompanied by a cash bond equal to the fine and costs due at the time the motion is filed.

“(2) For good cause, the court may

“(a) set aside the default and direct that a hearing on the complaint take place, or

“(b) schedule a hearing on the motion to set aside the default judgment.”

The court rule does not define what constitutes “good cause.” Untimely motions to set aside a default judgment may be considered as provided in MCR 2.603(D), which allows a motion to be filed within 21 days after entry of the default judgment. MCR 4.101(C)(3).

Part G—Civil Sanctions and Licensing Sanctions

1.20 Civil Fines, Costs, and Assessments for Civil Infractions

When a defendant is found responsible for a civil infraction, civil sanctions are imposed. Civil sanctions are intended to discourage the driver from violating the law again. Unlike criminal sanctions, the sanctions for civil infractions do not include jail or probation.

Civil sanctions for violations of municipal or state civil infractions are as provided by local ordinance or state law. See MCL 600.8727 and MCL 600.8827.

“The state court administrator shall annually publish and distribute to each district and court a recommended range of civil fines and costs for first-time civil infractions.” MCL 257.907(8). This schedule is not binding on the courts; it is intended as a normative guide for judges and district court magistrates and as a basis for public evaluation of disparities in the imposition of civil fines and costs throughout the state. *Id.*

Each district of the district courts and each municipal court may establish its own schedule of civil fines and costs for civil infractions that occur within the respective district or city (keeping in mind the statutory maximums explained below). If a court does establish a schedule, “it shall be prominently posted and readily available for public inspection.” It does not have to include all civil infractions and the “schedule may exclude cases on the basis of a defendant’s prior record of civil infractions or traffic offenses, or a combination of civil infractions and traffic offenses.” MCL 257.907(7).

The state court administrator expects each district court to prepare its own schedule of civil fines and costs, taking into account the various factors within the court affecting costs. Additional costs resulting from multiple appearances, enforcement proceedings for non-appearance, or failure to pay fines and costs, should be computed and added, as applicable, by the individual court.

A district court magistrate or judge may not impose sanctions in excess of the scheduled amounts. MCL 257.745(4), *People v Courts*, 401 Mich 57, 61-62 (1977), and *People v Bogedain*, 185 Mich App 349, 351-52 (1990).

“A court may not increase a scheduled civil fine because the defendant has requested a hearing.” MCR 4.101(F)(1).

A. Civil Fines

If the court finds the defendant responsible for a civil infraction, the court may order the defendant to pay a civil fine. The civil fine shall be payable immediately unless permission for late payment or installments, both within a specified time period, is included in the order or judgment. MCL 257.907(2). Fines imposed by the court must be paid at the time of assessment, except when the court allows otherwise, for good cause shown. MCR 1.110.

As a general rule,* if a person is determined to be responsible or responsible with explanation for a civil infraction, the civil fine shall not be more than \$100.00. MCL 257.907(2).

1. Fines Doubled for Moving Violations in Work Zone, Emergency Scene, or School Zone

Fines for moving violations are doubled if the violation occurs in any of the following:

- a work zone,
- at an emergency scene, or
- in a school zone during the period beginning 30 minutes before school in the morning and through 30 minutes after school in the afternoon. MCL 257.601b(1).

MCL 257.79d defines a “work zone” as “a portion of a street or highway that meets any of the following:

“(a) Is between a ‘work zone begins’ sign and an ‘end road work’ sign.

“(b) For construction, maintenance, or utility work activities conducted by a work crew and more than 1 moving vehicle, is

*Exceptions to the general rule are noted in sub-subsections (1) and (2), below.

between a ‘begin work convoy’ sign and an ‘end work convoy’ sign.

“(c) For construction, maintenance, surveying, or utility work activities conducted by a work crew and 1 moving or stationary vehicle exhibiting a rotating beacon or strobe light, is between the following points:

(i) A point that is 150 feet behind the rear of the vehicle or that is the point from which the beacon or strobe light is first visible on the street or highway behind the vehicle, whichever is closer to the vehicle.

(ii) A point that is 150 feet in front of the front of the vehicle or that is the point from which the beacon or strobe light is first visible on the street or highway in front of the vehicle, whichever is closer to the vehicle.”

An “emergency scene” is “a traffic accident, a serious incident caused by weather conditions, or another occurrence along a highway or street for which a police officer, firefighter, or emergency medical personnel are summoned to aid an injured victim.” MCL 257.601b(6)(a).

A “school zone” is defined as “school property on which a school building is located and the area adjacent to the school property that is designated by the signs Except as otherwise provided in subsection (5),* the school zone extends not more than 1,000 feet from the property line of the school in each direction.” MCL 257.627a(1)(c).

*Subsection (5) provides that a school zone may be extended beyond 1,000 feet when specific criteria are met.

2. Mandatory Fines

Several statutes specify the amount of a fine to be assessed. MCL 257.907(2) provides that a person who is determined responsible for one of the following civil infractions shall be ordered to pay the fines as indicated below:

- Disabled parking violations, MCL 257.674(1)(s) or a substantially corresponding local ordinance. The fine assessed shall be at least \$100.00 but not more than \$250.00.
- No proof of insurance, MCL 257.328. The fine assessed shall be \$50.00 or less.
- Children under four not in a child restraint system, MCL 257.710d. The fine assessed shall be \$10.00 or less.

*This is the only civil infraction where the fine and costs are combined into one lump sum. See Section 1.20(B), below, for information on costs.

- Seat belt violations, MCL 257.710e. The fine and costs* assessed shall be \$25.00.
- Failure to stop for a school bus, MCL 257.682 or a substantially corresponding local ordinance. The fine assessed shall be at least \$100.00 but not more than \$500.00.
- With the exception of civil infractions under MCL 257.319g or a substantially corresponding local ordinance, civil infractions that occurred while driving a commercial motor vehicle. The fine shall not exceed \$250.00.
- Motor carrier safety regulations, MCL 257.319g or a substantially corresponding local ordinance. The fine assessed shall not exceed \$10,000.00.

MCL 257.907(2)-(3).

MCL 257.629c(1) provides minimum fines for violating the maximum speed limit on a limited access freeway that has a maximum speed of 55 miles per hour or more:

Miles per hour over the speed limit	Minimum Fine
1– 5	\$10.00
6–10	\$20.00
11–15	\$30.00
16–25	\$40.00
26 and over	\$50.00

3. Distribution of Fines

The civil fine imposed for a violation of the Motor Vehicle Code or any other state statute “shall be exclusively applied to the support of public libraries and county law libraries” MCL 257.909(1).

In general, the civil fine imposed for a violation of a county, city, township, or village ordinance substantially corresponding to the Motor Vehicle Code shall be paid 1/3 to the support of the political subdivision whose law was violated and 2/3 to the county in which the political subdivision is located, in districts of the first and second class. However, districts of the third class may agree to a different distribution among the political subdivisions of that district. MCL 600.8379.

Note: A state police officer will almost always write up a civil infraction under state law. A local municipal police officer will almost always write up a civil infraction under a local ordinance,

if there is one, unless policy within the local municipality dictates otherwise (it's a revenue issue). Obviously, it is an advantage to the local municipalities to have the citing officer write up a civil infraction under the local ordinance, rather than the state statute because both the civil fine and costs go to support the municipality, rather than the fine going to support the libraries.

B. Costs

If the court orders a civil fine, the court must also determine the costs of the action. Taxable costs include all direct and indirect expenses of the plaintiff in connection with the civil infraction to the point of entry of judgment. MCL 257.907(4). This excludes expenses associated with the day-to-day operations of the court. *Board of Library Commissioners of the Saginaw Public Libraries v Judges of the 70th District Court*, 118 Mich App 379, 387-88 (1982). Court costs are limited to \$100.00. MCL 257.907(4).

1. Mandatory Order for Costs

If a defendant is found responsible* for a violation of MCL 257.674(1)(s) (disabled parking violations), the defendant must be ordered to pay the taxable costs as determined by the court pursuant to MCL 257.907(4). MCL 257.907(2) and (4).

If a defendant is found responsible for a violation of MCL 257.682 (failing to stop for a school bus), the court must order the defendant to pay taxable costs pursuant to MCL 257.907(4). MCL 257.907(2) and (4).

If the defendant is found responsible for a violation of MCL 257.710e (seat belt violations), the court must order the defendant to pay a combined fine and cost of \$25.00.* MCL 257.907(2).

If the defendant is found responsible for a civil infraction that occurred while he or she was driving a commercial motor vehicle, the court must order costs. MCL 257.907(3).

2. Orders for Costs Prohibited

The court may not order a defendant who has been found responsible for either of the following to pay costs:

- No proof of insurance, MCL 257.328. The court may only assess a maximum fine of \$50.00.
- Children under four not in a child restraint system, MCL 257.710d. The court may only assess a maximum fine of \$10.00. MCL 257.907(2).

*Either by an admission or by the court after a formal or informal hearing.

*This is the only civil infraction where the fine and costs are combined into one lump sum. See Section 1.20(A), above, for information on fines.

*Or a local ordinance substantially corresponding to a provision in the MVC.

3. Discretionary Order for Costs

Except as noted above in sub-subsections (1) and (2), the court *may* order costs when a person is determined to be responsible for a civil infraction under the Motor Vehicle Code* and the court orders a fine pursuant to MCL 257.907(2). The costs ordered shall not exceed \$100.00. MCL 257.907(4).

4. Distribution of Costs

Except as otherwise provided by law, costs are payable to the plaintiff's general fund. MCL 257.907(4). Nine dollars of any costs ordered under MCL 600.8381(1) before October 1, 2003, but collected on or after that date, shall be paid to the justice system fund created by MCL 600.181. MCL 600.8381(2)(b).

In general, the court costs imposed for a violation of a county, city, township, or village ordinance substantially corresponding to the Motor Vehicle Code shall be paid 1/3 to the support of the political subdivision whose law was violated and 2/3 to the county in which the political subdivision is located, in districts of the first and second class. However, districts of the third class may agree to a different distribution among the political subdivisions of that district. MCL 600.8379.

C. Assessments

Beginning October 1, 2003, former assessments for the Highway Safety Fund, the Secondary Road Patrol and Training Fund, and the Michigan Justice Training Fund were collapsed into a single "justice system" assessment of \$40.00 for traffic-related civil infractions, except for parking violations or violations for which the fines and costs imposed totaled \$10.00 or less. MCL 257.629e; MCL 257.907(14); MCL 600.8381(5).

In addition to any civil fines and costs ordered for the civil infractions listed in MCL 257.907(2) and (3), "the judge or the district court magistrate shall order the defendant to pay a justice system assessment of \$40.00 for each civil infraction determination." MCL 257.907(14). The \$40.00 assessment, which is not a civil fine, is deposited into the state treasury's justice system fund created by MCL 600.181. MCL 257.907(14) and MCL 600.8381(5).

Beginning October 1, 2003, when fines and costs are assessed in non-traffic civil infraction actions, the judge or district court magistrate shall order a defendant to pay the state assessment required by MCL 600.8727(4) (\$10.00 for municipal civil infractions) and MCL 600.8827(4) (\$10.00 for state civil infractions), in addition to any other fines and costs ordered. MCL 600.8381(5).

Assessments ordered before October 1, 2003, but collected on or after that date must be deposited in the justice system fund. MCL 257.907(13).

1.21 Waiving Civil Fines, Costs, and Assessments

“The court may waive fines, costs and fees, pursuant to statute or court rule, or to correct clerical error.” MCR 4.101(F)(4). MCL 257.907(4) prohibits the waiver of assessed fines unless costs are also waived.

The court shall waive civil fines, costs, and assessments under the following circumstances:

- For defective safety equipment violations—if written under MCL 257.683, “upon receipt of certification by a law enforcement agency that repair of the defective equipment was made before the appearance date on the citation.” MCL 257.907(9).
- For child restraint violations—“if the person, before the appearance date on the citation, supplies the court with evidence of acquisition, purchase, or rental of a child seating system meeting the [statutory] requirements” MCL 257.907(12).
- For failing to produce a valid registration certificate—“upon receipt of a certification by a law enforcement agency that the person, before the appearance date on the citation, produced a valid registration certificate that was valid on the date the violation . . . occurred.” MCL 257.907(15).
- For failing to produce a certificate of insurance—“upon receipt of verification by the court that the person, before the appearance date on the citation, produced valid proof of insurance that was in effect at the time the violation . . . occurred. Insurance obtained subsequent to the time of the violation does not make the person eligible for a waiver under this subsection.” MCL 257.907(16).*

*Effective May 1, 2004. 2004 PA 52.

If the court receives verification, before the appearance date on the citation, that the driver possessed valid insurance at the time of the violation, the court *may* waive the fee described under MCL 257.328(3)(c) (a discretionary fee of not more than \$25.00). MCL 257.907(16).

1.22 Treatment, Education, and Rehabilitation Programs

In addition to a civil fine and costs, a defendant may be ordered to attend and complete a program of treatment, education, or rehabilitation. MCL 257.907(5).

The court may not place the defendant on probation for a civil infraction. *People v Greenlee*, 133 Mich App 734, 736 (1984).

1.23 Failure to Comply With an Order or Judgment

*For information on proceeding under MCL 257.908, see subsection (B), below.

A. Mandatory Court Action

If a person fails to comply with an order or judgment issued for fines and costs for a civil infraction violation within the time prescribed by the court, the driver's license shall be suspended pursuant to MCL 257.321a until full compliance occurs. MCL 257.907(11). In addition, the court may also proceed under MCL 257.908. MCL 257.907(11).*

When a judgment from a civil infraction action remains unsatisfied for 28 days or more, the court gives the defendant one final opportunity to resolve the matter. The court does so by sending a 14-day notice to comply to the defendant's last known address. If the defendant still fails to comply within the additional 14 days, the court notifies the Secretary of State, who shall suspend the defendant's license. MCL 257.321a(2). The suspension remains in effect until the defendant satisfies the judgment and pays a license clearance fee of \$45.00. MCL 257.321a(5). Fifty-six days after any amount due and owing remains unpaid, a court must impose a late penalty equal to 20% of the outstanding amount. MCL 600.4803.

Note: MCL 257.321a applies to violations reportable to the Secretary of State under MCL 257.732. See Section 1.24, below, for discussion of reportable offenses. In addition, a court may take action regarding a person who has repeatedly failed to respond to parking violation notices or citations. See MCL 257.321a(7). If the person still fails to respond, the court may notify the Secretary of State, who may refuse to issue or renew that person's license until full compliance occurs. MCL 257.321a(8).

B. Permissive Court Action

A defendant who fails to comply with an order or judgment *may* face these additional sanctions:

- The defendant may be prosecuted for a misdemeanor. MCL 257.321a(1).
- The court may treat a default in payment as civil contempt. The court may then issue an order to show cause or a bench warrant of arrest for the defendant's appearance. MCL 257.908(1).

Unless the defendant shows that the default was not because of his or her intentional refusal to obey the court or a failure of the defendant to make a good-faith effort to get the funds required for payment, the court shall find the default constitutes civil contempt. MCL 257.908(3). Once the court finds the defendant guilty of civil contempt, the court may order the defendant imprisoned until payment is made. *Id.* The term of imprisonment shall be specified in the order and shall not exceed one day for each \$10.00 owed by

the defendant. A person committed shall be given credit toward payment for each day of imprisonment and each day of detention before judgment at the rate of \$10.00 per day. MCL 257.908(5).

A defendant shall not be discharged from custody until one of the following occurs:

- the defendant has been credited with the amount due pursuant to MCL 257.908(5);
- the amount due has actually been collected; or
- the amount due has been satisfied through a combination of the above two methods.

MCL 257.908(6). Civil contempt shall be purged when the defendant is discharged. MCL 257.908(7).

The state or local government may use civil process to collect the judgment, e.g., garnishing the defendant's wages or placing a lien on his or her property. MCL 257.907(10).

If the court finds that the default in payment does not constitute civil contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of payment or of each installment, or revoking the fine or costs or the unpaid portion thereof in whole or in part. MCL 257.908(4).

MCR 4.101(F)(3) and MCL 257.321a(9) provide similar procedures for failure to pay a fine and costs or comply with an order or judgment of the court when the defendant has been found responsible for a state civil infraction.

1.24 Reporting Civil Infractions to the Secretary of State

After it finds a defendant responsible for a traffic civil infraction, the court must report its finding to the Secretary of State. MCR 4.101(F)(2)(a). Within 14 days* after the entry of a civil infraction determination or default judgment for violation of the Motor Vehicle Code or a substantially corresponding local ordinance, a municipal judge or court clerk shall prepare and immediately forward to the Secretary of State an abstract of the court record. MCL 257.732(1)(a).

The abstract must be on a form furnished by the Secretary of State and shall be certified by signature, stamp, or facsimile signature to be true and correct. An abstract reporting a civil infraction determination or default judgment must contain the following information:

- “(a) The name, address, and date of birth of the person charged or cited.

*Beginning October 1, 2005, abstracts must be forwarded within five days.

“(b) The number of the person’s operator’s or chauffeur’s license, if any.

“(c) The date and nature of the violation.

“(d) The type of vehicle driven at the time of the violation and, if the vehicle is a commercial motor vehicle, that vehicle’s group designation and indorsement classification.

“(e) The date of the . . . judgment[] or civil infraction determination.

“(f) Whether bail was forfeited;

“(g) Any license restriction, suspension, or denial ordered by the court as provided by law.

“(h) The vehicle identification number and registration plate number of all vehicles that are ordered immobilized or forfeited.

“(i) Other information considered necessary to the secretary of state.” MCL 257.732(3)(a)–(i).

When received by the Secretary of State, an abstract is entered on the driver’s master driving record maintained by the Secretary of State. MCL 257.732(15). Pursuant to MCL 257.732(16), the court should not submit an abstract to the Secretary of state for the following offenses:

“(a) The parking or standing of a vehicle.

“(b) A nonmoving violation that is not the basis for the secretary of state’s suspension, revocation, or denial of an operator’s or chauffeur’s license.

“(c) A violation of chapter II that is not the basis for the secretary of state’s suspension, revocation, or denial of an operator’s or chauffeur’s license.

“(d) A pedestrian, passenger, or bicycle violation, other than a violation of . . . MCL 436.1703, or a local ordinance substantially corresponding to section 703(1) or (2) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1703, or section 624a or 624b or a local ordinance substantially corresponding to section 624a or 624b.

“(e) A violation of [MCL 257.710e]* or a local ordinance substantially corresponding to [MCL 257.710e].

*MCL 257.710e governs seat belt violations. See Section 2.7 of this volume.

“(f) A violation of section 328(1)* if, before the appearance date on the citation, the person submits proof to the court that the motor vehicle had insurance meeting the requirements of sections 3101 and 3102 of the insurance code of 1956, 1956 PA 218, MCL 500.3101 and 500.3102, at the time the citation was issued. Insurance obtained subsequent to the time of the violation does not make the violation an exception under this subsection.”

*MCL 257.328 governs no proof of insurance. See Section 2.18 of this volume.

1.25 Points and Driver Responsibility Fee

A. Points

A finding of responsibility is entered on defendant’s driving record. Points may also be assessed according to the schedule prescribed by statute. MCL 257.320a. Assessing points is a mandatory function of the Secretary of State; it is not a function of the court. Throughout the benchbook, the specific number of points imposed by the Secretary of State for each specific traffic offense is stated in the section detailing the specific traffic offense.

MCL 257.320a(5) states:

“If more than 1 conviction, civil infraction determination, or probate court disposition results from the same incident, points shall be entered only for the violation that receives the highest number of points under this section.”

B. Driver’s Responsibility Fee

The Secretary of State must impose a “driver responsibility fee” based on the number of points an individual accumulates on his or her driving record.* Assessing driver responsibility fees is a mandatory function of the Secretary of State; it is not a function of the court. MCL 257.732a(1) provides the following schedule of fees:

*Effective October 1, 2003. See 2003 PA 165.

“An individual, whether licensed or not, who accumulates 7 or more points on his or her driving record pursuant to sections 320a and 629c within a 2-year period for any violation not listed under subsection (2) shall be assessed a \$100.00 driver responsibility fee. For each additional point accumulated above 7 points not listed under subsection (2), an additional fee of \$50.00 shall be assessed. The secretary of state shall collect the fees described in this subsection once each year that the point total on an individual driving record is 7 points or more.”

Effective May 1, 2004, 2004 PA 52 also added the following provision to MCL 257.732a:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

Only points assigned after the effective date of the statute (October 1, 2003) will be used to calculate the driver responsibility fee. Points existing on a driver’s record prior to the effective date do not count. MCL 257.732a(6).

Failure to pay a driver responsibility fee within the time prescribed will result in license suspension. MCL 257.732a(3), (5).

1.26 License Suspension and Driver’s License Clearance Fee

The court may not suspend the defendant’s driver’s license for a civil infraction. *People v Greenlee*, 133 Mich App 734, 736–37 (1984).

A person is guilty of a misdemeanor if he or she fails to answer a citation, fails to appear, or fails to comply with an order or judgment issued for a civil infraction within the time prescribed by the court. MCL 257.321a(1). In addition, the Secretary of State shall suspend the person’s driver’s license until all matters relating to the violation or the noncompliance are resolved, including payment of all fines, costs, assessments, and a driver license clearance fee. MCL 257.748. See also MCL 257.321a(9) (driver license clearance fee in cases involving state civil infractions).

The driver’s license clearance fee is \$45.00. MCL 257.321a(5)(b).^{*} Under MCL 257.321a(11)(a)-(c), the court must distribute this \$45.00 fee as follows:

- \$15.00 to the Secretary of State;
- \$15.00 to the local funding unit; and
- \$15.00 to the Juror Compensation Reimbursement Fund.

Failure to pay a driver responsibility fee within the time prescribed will result in license suspension. MCL 257.732a(3), (5).

^{*}Effective January 1, 2003. See 2002 PA 741.